IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

M.F.A.No.17 of 2000

O.P.(M.V).NO.1392/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA.

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APPELLANT/4TH RESPONDENT:-

AMMUKUTTY, W/O.DEVARAJAN, PUTHIYIL HOUSE,
THRIKARIYOOR P.O., AYYAKKADU, KOTHAMANGALAM.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS/CLAIMANTS & RESPONDENTS:-

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1. SARAMMA, W/O.KURIAKOSE, KAROTTATTINKARA HOUSE, EDAYAR KARA, KOOTHATTUKULAM VILLAGE.

2. N.N.THANKAPPAN, S/O.NARAYANAN, NIRAPPATHU HOUSE, KOOTHATTUKULAM KARA, KOOTHATTUKUALM VILLAGE.

3. THE MANAGER,
ORIENTAL INSURANCE COMPANY LIMITED,
MATTANCHERRY BRANCH, ERNAKULAM.

4. NEELAKANDAN, S/O.KUNJUJU, VELLARAM KUNNEL HOUSE, KOZHIPPALLY KARA, PALAKKUZHA VILLAGE.

5. THE MANAGER,
THE NEW INDIA ASSURANCE COMPANY LIMITED,
MOOVATTUPUZHA BRANCH.

R1 BY ADV.SRI.H.SIVARAMAN
SRI.MATHEW CHERIAN

R3 BY ADV.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

THIS MISCELLANEOUS FIRST APPEAL HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.17 of 2000

Dated, this the 12th day of March, 2007

JUDGMENT

The owner of a motor vehicle which was involved in an accident has filed this appeal challenging the finding of the Tribunal by which the Insurer was exonerated. The Tribunal found that the collision of an autorickshaw with a mini lorry was on account of composite negligence of drivers of both the vehicles. The Tribunal held that the driver of the lorry contributed 60% negligence and that of the autorickshaw at 40%. As the driver of the autorickshaw was not having a valid licence, the owner and driver of the autorickshaw was held liable for 40% of the award amount.

2. In the very same accident, another person travelling in the autorickshaw sustained injuries for which she made a claim petition, which was allowed. Challenging that award, the appellant herein filed M.F.A.No.1232 of 1999 before this Court. A Division Bench of this Court by judgment dated 12.7.2005 confirmed the finding of the Tribunal, repelled the

contention of the appellant regarding her liability and dismissed that appeal. In view of the finding in M.F.A.No.1232 of 1999 that the driver of the autorickshaw is 40% negligent, there is no scope for interference with the award passed by the Tribunal in this appeal. So, this appeal is only to be dismissed.

In the result, the appeal is dismissed. C.M.P.No.138 of 2000 also shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-